

Message Text

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ORIGIN EUR-25

INFO OCT-01 ISO-00 SS-20 NSC-10 L-03 AID-20 CEA-02 CIAE-00

COME-00 EB-11 EA-11 FRB-02 INR-10 IO-14 NEA-10

NSAE-00 RSC-01 OPIC-12 SPC-03 TRSE-00 CIEP-02 LAB-06

SIL-01 OMB-01 STR-08 SSO-00 NSCE-00 INRE-00 (ISO) R

DRAFTED BY EUR/RPE - FKINNELLY

APPROVED BY EUR/RPE - AKATZ

E - JBILLER

S/S - MR. MILLER

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FM SECSTATE WASHDC

TO AMEMBASSY BONN IMMEDIATE

INFO USMISSION EC BRUSSELS IMMEDIATE

USMISSION OECD PARIS

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TOECO 7

E.O. 11652: N/A

TAGS: EFIN, OECD

SUBJ: JOLLES LETTER ON XCSS

FOR CASEY

1. DEPARTMENT HAS RECEIVED LETTER FROM JOLLES DATED NOVEMBER 1 WHICH DISCUSSES POLICY OBJECTIVES IN FIELD OF INTERNATIONAL INVESTMENTS. TEXT AS FOLLOWS:

2. DEAR MR. CASEY:

I WAS VERY HAPPY TO RECEIVE THROUGH THE AMERICAN EMBASSY IN BERNE YOUR PROPOSALS ABOUT THE WAY IN WHICH XCSS SHOULD
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HANDLE THE INVESTMENT ISSUE AT ITS FORTHCOMING MEETING. A FIRM AND SPECIFIC INITIATIVE BY A MAJOR GOVERNMENT SEEMS TO ME INDEED REQUIRED IN ORDER TO GET THE WORK OF OUR COMMITTEE REALLY STARTED IN A PURPOSEFUL DIRECTION AND TO GET BEYOND

THE STAGE OF GENERAL AND INCONCLUSIVE DISCUSSIONS.

IN THE LIGHT OF YOUR NOTE AND OF THE SECRETARIATE'S PAPER WHICH HAS IN THE MEANTIME BEEN ISSUED IT SEEMS TO ME, HOWEVER, STILL NECESSARY TO PUSH OUR REFLECTIONS FURTHER AS TO WHAT MIGHT CONSTITUTE AN ATTAINABLE OBJECTIVE.

XCSS AGREED IN JULY TO REINFORCE INTERNATIONAL COOPERATION IN THE FIELD OF INVESTMENT. I PRESUME THAT WE SHOULD NOW

TRY TO SPECIFY WHAT THE OBJECTIVE OF THIS INTERNATIONAL COOPERATION SHOULD BE. IT SEEMS TO ME PERSONALLY THAT WHAT WE ARE AIMING AT AMONG INDUSTRIALIZED COUNTRIES IS LIBERALIZATION, AS IN THE FIELD OF TRADE. SINCE NATIONAL POLICIES MIGHT CONFLICT WITH INTERNATIONAL OBJECTIVES OF FREE AND UNDISTORTED INVESTMENT ACTIVITIES FOR THE BEST AND MOST EFFICIENT USE OF ECONOMIC RESOURCES THE OECD OUGHT TO DETERMINE WHAT KIND OF INVESTMENTS AIDS OR DETERRENTS ARE ADMISSIBLE, AND UNDER WHAT CONDITIONS.

THE FIRST STEP, AS INDICATED IN PARAGRAPH 11C OF YOUR NOTE MUST CLEARLY BE THE TRANSPARENCY OF THE NATIONAL INVESTMENT POLICY, BUT CAN WE LEAVE IT AT MERELY STATING THIS PRINCIPLE, OR SHALL WE ASK THE OECD TO COMPILE INFORMATION ABOUT WHAT THESE NATIONAL POLICIES ARE, IN ORDER TO ASSESS COLLECTIVELY THEIR MOTIVATIONS AND INTERNATIONAL REPERCUSSIONS?

THIS WOULD PROBABLY BE NECESSARY IF OUR OBJECTIVE WERE TO DEFINE ADMISSIBLE EXCEPTIONS TO THE PRINCIPLE OF NEUTRALITY MENTIONED IN PARAGRAPH 11 A OF YOUR NOTE.

GENERAL PRINCIPLES OF WHAT THE POLICY OBJECTIVES IN THE FIELD OF INTERNATIONAL INVESTMENTS SHOULD BE ARE ONE THING, THE DEFINITION OF GENERALLY APPLICABLE EXCEPTIONS TO THE RULE (IN ACCORDANCE WITH PARAGRAPH 11F OF YOUR NOTE) QUITE ANOTHER. I FEAR VERY MUCH THAT IF WE WERE TO DEFINE IN LIMITED OFFICIAL USE
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ADVANCE EXCEPTIONS TO THE RULE OF NEUTRALITY AGREEMENT WOULD ONLY BE POSSIBLE ON THE BASIS OF THE MOST COMPREHENSIVE COMMON DENOMINATOR, I.E. ALL THE INDIVIDUAL EXCEPTIONS DEEMED NECESSARY BY ONE OR THE OTHER OECD-COUNTRY WOULD BE ADDED UP LEAVING US IN THE END WITH A MORE RESTRICTIVE SITUATION THAN THE PRESENT ONE. HOW CAN WE AVOID SUCH A PITFALL?

THE CHOICE SEEMS TO ME THEREFORE TO LIE BETWEEN

-- SOME VERY GENERAL RULES WITH THE PROVISIO THAT EXCEPTIONS MIGHT BE NECESSARY BUT SHOULD HAVE AS LITTLE INTER-

NATIONAL REPERCUSSIONS AS POSSIBLE; IN SPECIFIC CASES WHERE SUCH NEGATIVE EFFECTS OCCUR CONSULTATIONS SHOULD BE HELD. SHOULD THESE GENERAL RULES BE EXPRESSED IN TERMS OF ECONOMIC OBJECTIVES OR IN LEGAL TERMS (E.G. NATIONAL TREATMENT)? IN THE ABSENCE OF A MORE SPECIFIC FRAMEWORK OF RULES SUCH CONSULTATIONS WOULD TAKE THE FORM OF MORAL SUASION AND POSSIBLE COMPROMISE SOLUTIONS I.E. ACQUIESCENCE WITH SPECIFIC SITUATIONS UNDER CERTAIN CONDITIONS. SHOULD RECIPROCITY PLAY A ROLE HERE?

-- THE ELABORATION OF MORE SPECIFIC RULES AND GUIDELINES WHICH COULD MORE EFFECTIVELY BE INVOKED IN THE COURSE OF CONSULTATIONS, BUT IN THAT CASE THE ADMISSIBLE EXCEPTIONS WOULD ALSO HAVE TO BE SPELLED OUT MORE SPECIFICALLY WITH THE RISKS MENTIONED ABOVE;

-- WOULD THERE BE AN INTERMEDIATE SOLUTION? IS IT CONCEIVABLE THAT GOVERNMENTAL POLICIES WOULD BE SUBJECT TO MULTILATERAL SCRUTINY AND DISCUSSION LEADING TO CONCLUSIONS SPECIFIC TO EACH NATIONAL SITUATION? SUCH CONCLUSIONS COULD THEN SERVE AS TERMS OF REFERENCE IN CONCRETE CASES WHERE THE LATER BEHAVIOUR OF THAT PARTICULAR COUNTRY COULD CALL FOR CONSULTATION.

IT SEEMS TO ME NECESSARY TO GIVE TO THE SECRETARY GENERAL AND HIS GROUP OF NATIONAL EXPERTS A CLEARER INDICATION OF WHAT WE REALLY WISH TO ACCOMPLISH AND THIS WILL PRESUMABLY DEPEND ON CONCRETE ISSUES INDIVIDUAL GOVERNMENTS HAVE IN LIMITED OFFICIAL USE
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MIND AND ON THE ECONOMIC IMPORTANCE ATTACHED TO THESE ISSUES. THIS HAS NOT COME TO THE FORE SUFFICIENTLY IN OUR PREVIOUS DISCUSSIONS.

IN MY OPINION THE SAME HOLDS TRUE WITH RESPECT TO THE WORK PROGRAM ON MULTINATIONAL CORPORATIONS OUTLINED IN PART II OF THE SECRETARIAT'S DOCUMENT. I VERY MUCH SHARE THE OPINION EXPRESSED IN YOUR NOTE THAT AS A FIRST STEP THE SECRETARY GENERAL SHOULD PRODUCE A COMPREHENSIVE REPORT OF THE PRESENT STAGE OF THE WORK IN THE VARIOUS OECD-COMMITTEES DEALING WITH THE SEVERAL ASPECTS OF THE MNE-ISSUES. I SUSPECT THAT NONE OF THE MEMBERS OF XCSS IS FULLY AWARE OF HOW MUCH HAS ALREADY BEEN ANALYSED. IN THE LIGHT OF THIS SYNOPSIS PRESENTATION WHICH WE ARE UNFORTUNATELY STILL LACKING THOSE MEMBERS OF XCSS WHICH ARE VOICING CONCERN ABOUT THE MNE SHOULD INDICATE VERY CLEARLY TO WHAT EXTENT THESE CONCERNS ARE NOT ALREADY BEING DEALT WITH BY THE VARIOUS COMMITTEES. WE OUGHT TO KNOW WHAT SOME GOVERNMENTS ARE REALLY WORRIED ABOUT AND UNABLE TO ACCOMPLISH THROUGH THEIR OWN NATIONAL LEGISLATIONS BEFORE DETERMINING THE PROGRAM FOR A REINFORCEMENT OF INTERNATIONAL ACTION.

AS TO PART III OF THE SECRETARIAT'S PAPER DEALING WITH THE DEVELOPMENT ASPECTS I WOULD BE INCLINED TO CONSIDER A STOCK TAKING OF THE EFFECTS OF THE ACTIVITIES OF MNE IN DEVELOPING COUNTRIES QUITE USEFUL AT THIS STAGE. SUCH A STOCK TAKING SHOULD BE AS COMPREHENSIVE AS POSSIBLE INCLUDING AN ASSESSMENT OF BENEFICIAL AND NEGATIVE EFFECTS AS WELL AS OF THE PROBLEMS CREATED BY THE ATTITUDES AND POLICIES OF DEVELOPING COUNTRIES VIS-A-VIS FOREIGN ENTERPRISES.

SINCE THE OECD IS MAINLY A GROUP OF HOME COUNTRIES OF MNE AND DOES NOT COMPRISE THE MAJORITY OF DEVELOPING HOST COUNTRIES, THE ELABORATION OF RULES AND CONSULTATION PROCEDURES FOR THE RELATIONS BETWEEN INDUSTRIALIZED AND DEVELOPING COUNTRIES WOULD OF COURSE FALL OUTSIDE OUR SCOPE. THIS IS BEING DONE AT PRESENT WITHIN THE FRAMEWORK OF THE UN. IN THE LIGHT OF THE RATHER ONE-SIDED AND AGGRESSIVE TURN WHICH THE WORK IN THE UN APPEARS TO BE TAKING, AN ASSESSMENT OF THE OBJECTIVE FACTS BY THE OECD-COUNTRIES LIMITED OFFICIAL USE
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CONSTITUTES A USEFUL PREPARATION FOR THE DISCUSSIONS WHICH WILL TAKE PLACE AT THE ECOSOC-MEETING NEXT SUMMER.

SINCE YOUR NOTE DOES NOT MENTION THIS ASPECT I WOULD GREATLY APPRECIATE KNOWING YOUR VIEWS ABOUT IT.

GIVEN THE GREAT COMPLEXITY OF THE INVESTMENT ISSUES AND THE NEED TO CHART THE COURSE OF XCSS MORE CLEARLY I WOULD CONSIDER IT VERY USEFUL IF WE COULD HAVE A WORD TOGETHER IN PARIS BEFORE OUR MEETING. I SHALL CALL ON VAN LENNEP IN THE COURSE OF WEDNESDAY AFTERNOON AND COULD COME TO YOUR OFFICE IN THE MUETTE IF YOU CAN SPARE THE TIME.

IN THE EVENING WE SHALL HAVE OUR USUAL DINNER, THIS TIME AT THE BRITISH DELEGATION. I UNDERSTAND THAT THE BRITISH INTEND TO RAISE THE QUESTION OF GIVING A NEW AND DIFFERENT FOCUS TO THE FUTURE WORK OF XCSS. HAVE YOU ANY SUGGESTIONS ON YOUR PART ON THIS SUBJECT?

I HOPE THIS LETTER WILL REACH YOU BEFORE YOUR DEPARTURE FROM WASHINGTON AND I AM VERY MUCH LOOKING FORWARD TO SEEING YOU IN PARIS.

WITH BEST WISHES,

PAUL R. JOLLES

P.S. I AM SENDING A COPY OF THE PRESENT LETTER TO AMBASSADOR EBERLE. WITH MANY THANKS FOR MR. MALMGREN'S GREAT AND CANDID FEELINGS. PAUL. RUSH

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<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 11 MAY 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INVESTMENT PROGRAMS, MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 06 NOV 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: garlanwa
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE218800
Document Source: ADS
Document Unique ID: 00
Drafter: EUR/RPE - FKINNELLY
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19731167/abqcejot.tel
Line Count: 219
Locator: TEXT ON-LINE
Office: ORIGIN EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: garlanwa
Review Comment: n/a
Review Content Flags:
Review Date: 31 JUL 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <31-Jul-2001 by boyleja>; APPROVED <24-Sep-2001 by garlanwa>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: JOLLES LETTER ON XCSS
TAGS: EFIN, OECD, ECOSOC
To: BONN INFO EC BRUSSELS
OECD PARIS
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005